

In Confidence

Office of the Minister of Immigration
Ministers with Power to Act

MINOR REGULATORY AMENDMENT TO IMPLEMENT IMMIGRATION RESPONSE

Proposal

- 1 The Prime Minister announced on 2 February 2020 a range of short term changes to New Zealand's border settings to manage risks arising from the novel coronavirus (2019-nCoV). I seek agreement to urgent changes to the *Immigration (Carriers' Information Obligations) Regulations 2010* (the Regulations) in order that Immigration New Zealand (INZ) can require carriers to seek declarations from intending travellers before embarkation. I seek a waiver of the 28-day rule.

Current policy settings enable officials to make decisions about who cannot travel to or enter New Zealand, New Zealand citizens excepted

- 2 It is most efficient for New Zealand's border agencies, carriers, and passengers if decisions about a traveller's ability to travel to and enter New Zealand are managed and made early, ideally before that travel commences. There are a number of points at which such decisions are made, both prior to and at the New Zealand border.
- 3 Applications for visas and requests for Electronic Travel Authorities enable officials to determine whether foreign nationals will be granted the ability to travel to New Zealand, and the terms on which they will do. INZ also checks intending air travellers before they board their planes (see from paragraph 5 below).
- 4 Only New Zealand citizens have an absolute right under law to travel to and enter New Zealand. Holders of current resident class visas who have previously entered New Zealand are treated similarly to citizens. Other foreign nationals must apply for and be granted entry permission at the border on arrival. People who have travelled visa-waiver must in addition apply for and be granted a visa at the border.

Advance Passenger Processing checks travellers before boarding

- 5 INZ makes decisions about individual travellers when they check in for their flight. This is done through the Advance Passenger Processing system (APP), which receives information from airlines at that point. The information provided by carriers to INZ is enabled by section 96 of the Immigration Act 2009 (the Act) and the detail is specified in the Regulations. The Chief Executive of the Ministry of Business, Innovation and Employment (which includes INZ) must notify the carriers of their information obligations.
- 6 Once INZ has received the APP information, it then provides *board or do not board* directives to those carriers. APP will refuse boarding to foreign nationals who require a visa and do not hold one, who are travelling on a passport listed as lost or stolen, or who have an alert against their identity.

Cabinet has already agreed to the classes of people who will be denied entry as part of the response to 2019-nCoV

- 7 As agreed by Cabinet on 1 February 2020 [CAB-20-MIN-0015], under section 22 of the Immigration Act 2009, the Minister of Immigration has certified immigration instructions which refuse entry permission to people who have left or transited through mainland China from 2 February 2020, with the exception of:
- 7.1 New Zealand citizens (including those from the three countries of the Realm);
 - 7.2 permanent resident visa holders; or
 - 7.3 resident visa holders granted in New Zealand; or
 - 7.4 resident visa holders arriving in New Zealand for a second or subsequent time as the holder of the visa;
 - 7.5 partner and spouses, dependent children or legal guardians who are travelling with the above;
 - 7.6 airline and maritime crew;
 - 7.7 an Australian citizen or Australian permanent resident who, prior to 2 February 2020, had their primary place of residence in New Zealand;
 - 7.8 citizens of Pacific Island countries (to enable them to return to home countries);

I seek a change to regulations for better management of non-New Zealand travellers offshore

- 8 Ministers with Power to Act are asked to extend the information which can be requested of carriers about travellers for APP purposes, to manage the risk of spread of 2019-nCoV. I propose amending the Regulations to require carriers, if instructed by the Chief Executive, to request a statement from each person who intends to board the craft about whether they have been in a place or places of concern during the 14-day period immediately prior to checking in. If the person has been in a place or places of concern during that period, the carrier will be obligated to advise INZ of that fact, and the details. INZ will make a decision about whether to board that person. This broadly mirrors the rules established by Australia (which exclude all incoming passengers who were in mainland China on or after 1 February 2020 from entry to Australia for 14 days).
- 9 I note that, for example, INZ cannot prevent New Zealand citizens from travelling to or entering New Zealand. The carrier may however decide not to carry an individual. The amended regulation will not be exclusive to airlines and INZ is investigating how it will extend the obligation to cruise vessels (which have not previously been subject to APP obligations).
- 10 There is a risk that the recommended change could breach the New Zealand Bill of Rights Act 1990 protection against discrimination on the grounds of nationality, as the nationals of the place or places of concern to be specified by the Chief Executive will be impacted more heavily by this measure than other people. I consider that there is a justification for any impact on freedom of movement, and I have built in two protections to limit this impact: firstly, as noted, the period for which information is sought is limited to 14 days prior (as recommended by the

World Health Organization) and secondly, the amendment, unless formally extended by Cabinet, will be automatically repealed on 30 April 2020.

Timing and 28-day rule

- 11 I recommend that the Amendment Regulations come into force on the day they are made. Given the urgency of the situation, I recommend that the 28-day rule is waived.

Compliance

- 12 The Amendment Regulations comply with each of the following:
- 12.1 the principles of the Treaty of Waitangi;
 - 12.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 12.3 relevant international standards and obligations;
 - 12.4 the Legislation Design Advisory Committee's Guidelines on Process and Content of Legislation.
- 13 Specifically, I note that the proposed changes do not unlawfully discriminate on the grounds of nationality, as they are based on where individuals have been, rather than on their citizenship.

Regulations Review Committee

- 14 There are no anticipated grounds for the Regulations Review Committee to draw the Amendment Regulations to the attention of the House under Standing Order 315.

Certification by Parliamentary Counsel

- 15 The draft Regulations have been certified by the Parliamentary Counsel Office as being in order for submission to Cabinet.

Impact analysis

- 16 Given the speed of the change, there has not been time to prepare a Regulatory Impact Assessment.

Publicity

- 17 This change will be published in accordance with INZ's usual processes and may also be publicly announced. Carriers will be advised through targeted communications.

Proactive release

- 18 I propose to release this paper proactively. Any redactions made will be consistent with the Official Information Act 1982.

Consultation

- 19 The speed of the policy development process has meant that normal consultation processes were not possible. The Ministry of Justice and the Department of the Prime Minister and Cabinet have been advised of the work underway.

Recommendations

20 I recommend that Ministers with Power to Act:

- 1 **note** that the Prime Minister has announced a range of short term changes to our border settings to manage risks arising from the novel coronavirus (2019-nCoV);
- 2 **agree** to require carriers to provide to the Ministry of Business, Innovation and Employment information about every person who intends to board a craft, and who has been in a place of concern within the 14-day period before checking in, before boarding that person, to manage the risk of spread of 2019-nCoV;
- 3 **invite** the Minister of Immigration to issue drafting Instructions to Parliamentary Counsel Office to amend the *Immigration (Carriers' Information Obligations) Regulations 2010* to implement the decision above;
- 4 **authorise** Ministers with Power to Act to:
 - 4.1 approve the amended regulations;
 - 4.2 agree to any further changes required which are consistent with the policy outcomes sought, and
 - 4.3 recommend them to the Governor General for assent;
- 5 **agree** to waive the 28-day rule in order that the amendments can come into effect on the day they are made; and
- 6 **agree** that, unless extended, this amendment will be automatically repealed on 30 April 2020.

Authorised for lodgement

Hon Iain Lees-Galloway
Minister of Immigration